

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT GREENEVILLE

RICHARD D. LOMAX)
v.) NO. 2:08-CV-03
JOSEPH SHEPHERD and)
CORPORAL WALKER)

MEMORANDUM and ORDER

Acting *pro se*, this former state prisoner filed this civil rights action, under 42 U.S.C. § 1983, asserting that his rights were violated during his incarceration at the Northeast Correctional Complex. Defendants, through the Office of Attorney General for the State of Tennessee, have filed a motion to dismiss for plaintiff's failure to appear for his deposition, pursuant to Federal Rules of Civil Procedure 37(d)(1) and 37(d)(3), a supporting brief, and a notice of the filing of a statement of plaintiff's nonappearance. (Docs. 17-19).

In their motion, defendants assert that they gave proper notice to the plaintiff to appear for a deposition upon oral examination on Monday, April 26, 2010, at 12:30 p.m., at the Office of Attorney General, 2nd Floor, Donnelly J. Hill Building, 170 North Main Street, Memphis, TN 38103-1877. According

to the motion, the Notice of Deposition was mailed to plaintiff on April 12, 2010, by certified mail, return receipt requested. Two days later, plaintiff signed the certified mail receipt, but did not appear for the deposition on April 27, 2010. Defendants state that, to take plaintiff's deposition, counsel traveled from Nashville to Memphis and hired a court reporter, all of which turned out to be a complete waste of time for the travelers, as well as a futile drain on the State's fisc.¹ Defendants ask for dismissal of this lawsuit for plaintiff's failure to comply with discovery.

Plaintiff did not respond to the Notice of Deposition by seeking relief from the Court. Likewise, plaintiff has not responded to defendant's motion to dismiss.

The right of defendants to orally depose plaintiff is absolute. All parties have an obligation to cooperate in discovery. *Pro se* parties are not excused from compliance with the Federal Rules of Civil Procedure, including the Discovery Rules contained therein.

Also, as pointed out in defendants' Notice to the Court (Doc. 20), plaintiff has also failed to file a timely pretrial narrative statement, in accordance

¹ Plaintiff filed this case while he was confined in a West Tennessee prison.

with the Scheduling Order entered on March 19, 2010. (Doc. 15).

Accordingly, the motion to dismiss (Doc. 17) will be **GRANTED**, and this case will be **DISMISSED** by separate order.

ENTER:

s/J. RONNIE GREER
UNITED STATES DISTRICT JUDGE